

APPEAL NO. 2929

SANDERSON-NEWBOULD LIMITED

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 9, 1989

Participants: The appellant was not represented as an Agreed Statement of Facts had been signed by both parties before the hearing.

Mary Anne McMahon
Len Farrell
for the respondent

Decision: Appeal allowed

March 31, 1989

Friday, the 31st day of March 1989

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SANDERSON-NEWBOULD LIMITED

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION

The Canadian International Trade Tribunal, pursuant to section 61 of the *Special Import Measures Act*, heard an appeal in respect of six shipments of alloy tool steel bars imported by Sanderson-Newbould Limited from Sanderson Kayser Limited of Sheffield, England, through the ports of Montréal, Quebec, and Toronto, Ontario, during the period of December 4, 1985, to July 15, 1986, and declares, pursuant to subsection 61(3) of the *Special Import Measures Act*, that, in respect of the following entry numbers (K47 References), the corresponding amount constitutes the anti-dumping duty refundable by the Deputy Minister of National Revenue (Customs and Excise) or payable by Sanderson-Newbould Limited.

<u>K47 Reference</u>	<u>Entry Number</u>	<u>Anti-Dumping Duty</u>
KT 10005	A216163	\$ 4,752.41 Refundable
KT 10008	A295046	\$ 667.71 Refundable
KT 10076	A227605	\$ 2,507.62 Refundable
KT 8757	A205006	\$ 5,409.04 Refundable
KM 09349	A505791	\$ 477.21 Payable
KT 7771	E737399	NIL

The appeal is allowed.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Sidney A. Fraleigh
Sidney A. Fraleigh

Member: W. Roy Hines
W. Roy Hines

Witnessed: Robert J. Martin
Robert J. Martin
Secretary

Friday, the 31st day of March 1989

PANEL: ROBERT J. BERTRAND, Q.C., Presiding Member
 SIDNEY A. FRALEIGH, Member
 W. ROY HINES, Member

APPEAL NO. 2929

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**THE DEPUTY MINISTER OF NATIONAL REVENUE
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STATEMENT OF REASONS

This is an appeal pursuant to section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (the Act), from a decision of the respondent dated October 21, 1987, in which the respondent determined anti-dumping duty payable and anti-dumping duty refundable in respect of alloy tool steel bars imported by the appellant.

The steel bars were imported from Sanderson Kayser Limited of Sheffield, England, through the ports of Montréal, Quebec, and Toronto, Ontario, during the period of December 4, 1985 to July 15, 1986, under the following entry numbers and dates:

<u>K47</u> <u>Reference</u>	<u>Entry</u> <u>Number</u>	<u>Customs</u> <u>Office</u>	<u>Date</u> <u>Entered</u>
KT 10005	A216163	Toronto	12/06/86
KT 10008	A295046	Toronto	18/02/86
KT 10076	A227605	Toronto	15/07/86
KT 8757	A205006	Toronto	24/04/86
KM 09349	A505791	Montréal	14/04/86
KT 7771	E737399	Toronto	04/12/85

Although the appellant initially commenced this appeal on the basis of a contest over anti-dumping duties that the respondent claimed were payable or refundable (the amounts are set out in document A2929-2), parties are now in agreement with respect to the anti-dumping duties payable or refundable. These amounts are set out in document A2929-13. Revised normal values with respect to the alloy tool steel bars form the basis of the agreement.

THE LEGISLATION

The statutory provisions relevant to this appeal are set out in the Act as follows:

56. (1) Where, subsequent to the making of an order or finding of the Tribunal ... any goods are imported into Canada, a determination by a customs officer

...

(b) of the normal value of ... any imported goods that are of the same description as goods to which the order or finding of the Tribunal ... applies,

...

made within thirty days after they were accounted for under subsection 32(1), (3) or (5) of the *Customs Act* is final and conclusive unless the importer, after having paid all duties owing on the imported goods, makes, within ninety days after the making of the determination, a written request in the prescribed form to a designated officer for a re-determination of such determination.

...

58. A determination ... by a designated officer pursuant to section ... 56 ... with respect to any imported goods is final and conclusive unless the importer, after having paid all duties owing on the goods and within ninety days after the date of the determination or re-determination, makes a written request in the prescribed form to the Deputy Minister for a re-determination.

59. The Deputy Minister may re-determine any determination ... referred to in section ... 56 ... made by a designated officer or other customs officer in respect of any imported goods

(a) in accordance with a request made pursuant to section 58;

...

(e) in any case where he deems it advisable, within two years after the determination referred to in ... subsection 56(1) ... if he has not previously made a re-determination with respect to the goods pursuant to any of paragraphs (a) to (d).

60. Where, in accordance with section ... 59, a re-determination ... of the normal value ... on the goods has been made,

(a) the importer shall pay any additional duty payable with respect to the goods, or

(b) the whole or a part of any duty paid in respect of the goods shall be returned to the importer forthwith,

if on the re-determination it is determined that the additional duty is payable or that the whole or the part of the duty paid was not payable, as the case may be.

61. (1) A person who deems himself aggrieved by a re-determination of the Deputy Minister made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.

...

61. (3) On any appeal under subsection (1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62.

The appeal was originally commenced before the Tariff Board. However, by virtue of section 60 of the *Canadian International Trade Tribunal Act*, S.C. 1988, c. 56 (the Tribunal Act), all matters pending before the Tariff Board on the day immediately preceding the commencement day and for which the members thereof do not have jurisdiction under subsection 54(2) of the Tribunal Act shall be taken up and continued by the Canadian International Trade Tribunal under and in conformity with the Tribunal Act. With respect to appeals filed pursuant to section 61 of the *Special Import Measures Act*, subsection 54(2) of the Tribunal Act stipulates that members of the Tariff Board have jurisdiction with respect to such appeals if, *inter alia*, they are in the course of being heard on the day immediately preceding the commencement day.

The Tribunal Act commencement day is December 31, 1988 (SI/89-3; P.C. 1988-2820).

Appeal No. 2929 has been heard after the commencement day. Therefore, in view of the foregoing legislative provisions, the appeal is taken up and continued by the Canadian International Trade Tribunal.

THE EVIDENCE

Although the present case had initially proceeded on the basis of a contested appeal, both parties are now in agreement on the amount of anti-dumping duty owed or payable in respect of the six shipments of imported steel bars. Pursuant to their mutually agreed position, both parties submitted on December 15, 1988 (Document A2929-11) an "Agreed Statement of Facts," the contents of which are as follows:

AGREED STATEMENT OF FACTS

The Appellant and Respondent herein, for the purposes of this hearing, agree on the following facts.

1. The Appellant is a body corporate, duly incorporated under the Canada Business Corporations Act, with its head office in the City of Concord, in the Province of Ontario and carries on business as an importer and distributor of specialty steel products.
2. During the period between December 1985 and July 1986, six shipments of alloy tool steel bars were imported by the appellant from its parent company, Sanderson Kayser Limited, in the United Kingdom.
3. As alloy tool steel bars from the United Kingdom are subject to the Canadian Import Tribunal's anti-dumping finding of June 27, 1985, the importations were reviewed and anti-dumping duties were collected on the six shipments in question. The amount of anti-dumping duty on two of the six shipments was based on an advance over export price. For the remaining four shipments, specific normal values resulting from a 1986 reinvestigation were applied, the details of which were provided to the appellant in a letter from Customs and Excise dated October 31, 1986.
4. The appellant subsequently submitted forms K47 appealing these six assessments to the Deputy Minister on the grounds that the exporter would be supplying the Department with additional information which would result in revised normal values for all six shipments.
5. On October 21, 1987, after completing a review of the additional information submitted by the appellant relating to the form K47 appeals, the Director of Enforcement and Appeals, Assessment Programs, on behalf of the Deputy Minister, wrote to the appellant's broker advising of his decision that revised normal values had been established for the alloy steel bars in question. This resulted in a reappraisal and partial refund of anti-dumping duties originally assessed on two of the 1986 shipments. No additional refunds were determined to be applicable to the remaining three 1986 shipments. On the 1985 shipment, no anti-dumping duty was determined to be applicable and all anti-dumping duties previously paid were refunded.
6. On January 12, 1988, the appellant's customs broker wrote to the Deputy Minister of National Revenue advising him that the appellant wished to appeal the decision of October 21, 1987, maintaining that no anti-dumping duties were payable with respect to certain of the goods in question. The appellant also advised that a Notice of Appeal had been filed with the Secretary of the Tariff Board.
7. Following the appeal of the Deputy Minister's decision to the Tariff Board, it was learned that revised normal values resulting from a separate reinvestigation

had been issued on February 23, 1987 on the basis of information for the period January 1 through October 31, 1986. The Department agrees that these latest normal values should have been used for assessment of anti-dumping duties for the five 1986 shipments in question.

8. As a result of meetings with Customs officials to discuss the appeal before the Tariff Board in light of the normal values issued on February 23, 1987, the appellant concurred with the revised anti-dumping duties determined by applying these revised values to the five 1986 shipments in question. Further, he now agrees with the Deputy Minister decision refunding all dumping duties assessed on the 1985 shipment.
9. On May 9, 1988, following discussions with Customs and Excise, the appellant advised the Secretary of the Tariff Board that he was now in agreement with the final reassessment of anti-dumping duties on the six shipments as calculated by Customs and Excise, and that he wished to settle the matter as expeditiously as possible. Based on the agreed to reassessment, the appellant is entitled to a partial refund of anti-dumping duty on four shipments and is liable for additional anti-dumping duty on the fifth. On the remaining shipment no anti-dumping duty was applicable and all duties previously paid had been refunded in full. Details of the final reassessment agreed to by the appellant and Customs and Excise are as follows:

<u>K47 Reference</u>	<u>Entry Number</u>	<u>Refund Based on Reassessment*</u>
KT 10005	A216163	\$ 4,752.41
KT 10008	A295046	667.71
KT 10076	A227605	2,507.62
KT 8757	A205006	5,409.04
KM 09349	A505791	(477.21) Additional duties owing
KT 7771	E737399	NIL

*See attached Appendix for schedule detailing calculation of above refund.¹

10. On May 30, 1988, the appellant again wrote to the Tariff Board advising that a settlement was currently being discussed with Customs and Excise.
11. In view of the fact that the settlement between the appellant and Customs and Excise has now been agreed to in the amounts refundable and payable as detailed in #9 above, the appellant hereby requests that the Tariff Board direct the Deputy Minister to reappraise the six shipments in accordance with this agreement.

The "Agreed Statement of Facts" has been signed by Ms. L. Holland, solicitor for the respondent, and by Mr. D.R. McCutcheon, agent of the appellant.

1. This Appendix is attached to the "Agreed Statement of Facts" and forms part of the record, but is not enclosed with this decision.

Neither the appellant nor its agent was in attendance at the hearing of this appeal. The respondent was represented by Ms. M.A. McMahon - articling student of the Department of Justice. She did not call any witnesses.

FINDINGS

The parties to the appeal have asked the Tribunal to declare that the amounts of anti-dumping duty payable or refundable with respect to the six shipments of imported alloy tool steel bars are those amounts set out in paragraph 9 of the "Agreed Statement of Facts."

The only reason the parties have come before the Tribunal is that, pursuant to paragraphs 59(a) and 59(e) of the Act, the Deputy Minister is *functus officio* as of October 21, 1987. The respondent does not, as of that date, have jurisdiction to approve the assessments set out in paragraph 9 of the "Agreed Statement of Facts."

By virtue of subsection 61(3) of the Act, the Tribunal has jurisdiction to "declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken." Further, pursuant to paragraph 60(b) and subsection 61(3) of the Act, which states that "the Tribunal may make such order or finding as the nature of the matter may require," the Tribunal has jurisdiction to declare whether "the whole or a part of any duty paid in respect of the goods shall be returned to the importer."

After having examined the "Agreed Statement of Facts" and the documents on file, the Tribunal concludes, with respect to the six shipments of alloy tool steel bars imported by the appellant under entry numbers set forth in paragraph 9 of the "Agreed Statement of Facts," that the respective amount of anti-dumping duty payable or refundable is as listed in paragraph 9 of the "Agreed Statement of Facts." The appeal is allowed.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Sidney A. Fraleigh
Sidney A. Fraleigh

Member: W. Roy Hines
W. Roy Hines

Witnessed: Robert J. Martin
Robert J. Martin
Secretary